IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 315 OF 2003

Jose Dias, major,
Indian National,
c/o Mr. J.S. Rebello,
18th June Road,
Opp. Samrat Theatre,
Panaji,Goa. ... Petitioner

Versus

1. Mrs. Jessuina Effie
de Souza,

2. Mr. Nobert Tellis,
both r/o 10-B,
Patto Colony, Panaji,
Goa,

3. Village Panchayat of
Corlim, through its
Sarpanch, Guru Jalmi,
having office at Corlim,
Tiswadi, Goa. ... Respondents.

Shri A. F. Diniz, advocate for the petitioner.

Shri R. B. D'Sa, advocate for respondent nos. 1 and 2.

Shri A. D.Bhobe, advocate for respondent no.3.

CORAM : F. I. REBELLO, J.

DATE : 7th August, 2003

ORAL JUDGMENT

Rule. Heard forthwith.

Respondent no.3, on instructions, has no objection to the order being passed to set aside the impugned order of the trial Court. On behalf of respondent nos. 1 and 2 in the Writ Petition, the setting aside of the order is being opposed firstly on the ground that no cause has been made out considering what has been set out in the affidavit. It

is also pointed out that the affidavit of the person who ought to have filed the affidavit has not been filed. In these circumstances, it is pointed out that this Court should not interfere with the impugned Order.

2. A suit has been filed by the petitioner herein seeking cancellation of the sale deed made in favour of respondent nos.1 and 2. Respondent nos.1 and 2 also claimed right in the property through the same owners. The sale deed in favour of the petitioner was done, according to the petitioner, by the constituted attorney of the owner. The sale deed in favour of respondent nos.1 and 2 was done by the owners themselves. The sale deed of the petitioner was anterior in point of time.

3. It transpires that after the matter was remanded by this Court, learned counsel for the petitioner did not appear on the date fixed, as on that date the learned Judge was not available. He thereafter forgot to take subsequent dates granted and in these circumstances the suit was dismissed for non-prosecution. By the time the petitioner became aware of the order, there was a delay in taking out the application for setting aside the order for dismissal of the suit and, in these circumstances, the petitioner moved the application condoning the delay, which is the subject-matter of the present Writ Petition.

4. To my mind valuable rights of the party are involved. Cause shown would be sufficient cause. At the highest, respondent nos.1 and 2 can be compensated in terms of money. In the light of that the impugned Order dated 10th April, 2003, is set aside subject to the petitioner paying to respondent nos. 1 and 2 costs quantified at Rs.1,500/- (rupees one thousand five hundred only), as a condition precedent, within four weeks from today.

F. I. REBELLO, J.

mc.